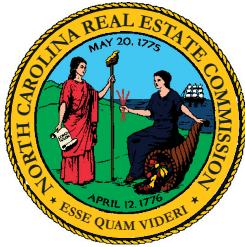


NORTH CAROLINA REAL ESTATE COMMISSION



ADVISORY COMMITTEE

INTERSTATE BROKERAGE COOPERATION

REPORT

September 11, 2002

**NORTH CAROLINA REAL ESTATE COMMISSION
INTERSTATE BROKERAGE COOPERATION ADVISORY COMMITTEE**

CONTENTS

Committee Members

Meeting Report

Exhibits

1. April 24, 2002 memo RE: Commercial Temporary Practice Permit Program
2. May 7 letter from Legislative Committee of Charlotte Regional Commercial Board of REALTORS® RE: Commercial Temporary Practice Permit Program
3. Draft “Elements of Nonresident Commercial Real Estate License Program”

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INTERSTATE BROKERAGE COOPERATION ADVISORY COMMITTEE

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NORTH CAROLINA REAL ESTATE COMMISSION
INTERSTATE BROKERAGE COOPERATION ADVISORY COMMITTEE

Meeting

August 7, 2002

Raleigh, North Carolina

REPORT

Committee Members Present:

James I. Anthony, Jr. (Raleigh)
William C. Lackey, Jr. (Charlotte)
A. Bennett Orme, Jr. (Charlotte)
Asst. Atty. Gen. Harriet F. Worley (Raleigh)

Others Present:

Garth K. Dunklin (Charlotte)

Commission Staff Advisors:

Phillip T. Fisher, Executive Director, *Facilitator*
Larry A. Outlaw, Director of Education and
Licensing
Special Dep. Atty. Gen. Thomas R. Miller,
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Investigations

General

The second meeting of the North Carolina Real Estate Commission's *Interstate Brokerage Cooperation Advisory Committee* was convened in the conference room of the Commission's office August 7, 2002 at 10:00 a.m. Mr. Fisher reported that, since the meeting was called to discuss issues related exclusively to commercial real estate brokerage, the two members of the committee primarily engaged in residential real estate brokerage (Mr. Morrison and Ms. Rogers) elected not to attend. Mr. Fisher welcomed to the meeting as an additional Commission staff advisor, Director of Audits and Investigations Emmet Wood. Mr. Fisher also welcomed Garth K. Dunklin to the meeting who as a real estate attorney, commercial real estate broker and author of the real estate brokerage section of the Commission's *North Carolina Real Estate Manual*, was invited to participate in the discussion to lend his unique perspective.

Background

Mr. Fisher again reviewed with the committee its charge from the Real Estate Commission; namely, to identify any legal or other obstacles facing real estate licensees from other states who wish to engage in real estate brokerage in North Carolina; to demonstrate how North Carolina real estate consumers, licensees and others are affected by these obstacles; and then discuss ways to remove them without reducing protections currently afforded consumers. Towards this end, the committee, at its October 30, 2001 meeting, defined the applicable issues and discussed possible solutions.

At the conclusion of its October 30, 2001 meeting, the committee recommended that the Real Estate Commission (1) aggressively pursue reciprocal real estate licensing arrangements with other states (esp. GA, SC, DC metropolitan area, NY, CA, TX, IL, FL, MA, and PA), (2) consider ways to expedite the license application process for nonresident North Carolina real estate licenses, and (3) explore the establishment of a temporary practice permit program for out-of-state licensees which would require them to partner with North Carolina brokers. With regard to the first two recommendations, Mr. Outlaw reported that staff was continuing to encourage other states to enter into reciprocal licensing arrangements but that some states are simply unwilling or unable to do so. Likewise, after reviewing the application process for nonresident licenses, staff was unable to identify any changes which would substantially reduce the time required to obtain such licenses.

Regarding the committee's recommendation that the Commission explore the establishment of a program whereby out-of-state licensees could engage in real estate brokerage in North Carolina under a temporary permit, Mr. Fisher stated that the Commission, at its May, 2002 meeting, considered a staff proposal for such a program which was outlined in Mr. Fisher's April 24 memorandum to the committee members [**Item 1**]. Mr. Fisher reported

that at that meeting, the Commission also considered a May 7 letter from the Legislative Committee of the Charlotte Regional Commercial Board of REALTORS® [Item 2] commenting on certain elements of the proposed program. According to Mr. Fisher, the Commission, after discussion, endorsed the concept of the program outlined by staff but postponed action on the proposal to afford staff additional opportunity to meet with members of the advisory committee and other interested persons to work to resolve any issues of special concern to them.

Mr. Fisher stated that, following the Commission's April meeting, he and members of the Commission staff drafted a new proposal which would establish a "nonresident commercial real estate license program" [Item 3]. The program would incorporate certain elements of the previously proposed temporary practice permit program but additionally address the concerns of the Charlotte Regional Commercial Board of REALTORS®. Mr. Fisher stated that the program would also be more compatible with the Commission's current licensing program and, therefore, easier to administer. The committee devoted the remainder of the meeting to discussing the proposed program.

Recommendation

After discussion, the committee unanimously agreed to recommend to the Real Estate Commission that it support legislation to establish a "limited nonresident commercial real estate license program" containing the following elements:

ELEMENTS OF LIMITED NONRESIDENT COMMERCIAL REAL ESTATE LICENSE PROGRAM

I. General

A. Any person licensed as a real estate broker or real estate salesperson in a state other than North Carolina could apply for and, if qualified, receive a "North Carolina Limited Nonresident Commercial Real Estate Broker (or Salesperson) License" ("nonresident commercial license", "nonresident commercial licensee").

1. Real estate firms would not be required nor would they be permitted to obtain a nonresident commercial license.
2. An out-of-state salesperson could obtain a nonresident commercial license without the salesperson's supervising broker in his qualifying state also obtaining one, but the supervising broker must sign the salesperson's application for licensure.

3. North Carolina would issue nonresident commercial licenses to brokers and salespersons from other states without regard to whether such states offer similar licensing privileges to North Carolina licensees.

B. The nonresident commercial license would allow the licensee to perform real estate brokerage acts in North Carolina only

1. in connection with commercial real estate transactions; and
2. while affiliated with a resident North Carolina real estate broker.

C. "Commercial Real Estate" would be defined to include land zoned for commercial use (even if it is not currently used for commercial purposes) and land, regardless of the zoning or current use, which the parties in good faith intend to have re-zoned or used for commercial purposes as a part of the transaction.* [Note: Mr. Miller, Mr. Dunklin and Ms. Baer agreed to draft a definition of the term "commercial real estate" for submission to the committee members for their consideration.]

II. License Application and Renewal

A. Interested persons would file an application for licensure with the North Carolina Real Estate Commission ("Commission") together with a

1. \$100 fee;
2. certificate of license history from the state real estate commission where the applicant resides or maintains his principal office ("qualifying state"); and
3. criminal record report from each county where the applicant has resided during the seven-year period immediately preceding filing his application (as required for other North Carolina real estate licenses).

B. The nonresident commercial license would automatically expire on June 30 following issuance but could be renewed by the same process and payment of the same fee as for other nonresident North Carolina real estate licenses.

C. The nonresident commercial license would remain valid only so long as the nonresident commer-

cial licensee's real estate license in his qualifying state is valid; therefore, the renewal application form would require the licensee to affirm that he

1. is licensed in good standing in his qualifying state; and
2. has satisfied that state's real estate continuing education requirement.

III. Brokerage Cooperation Agreement

A. At such time as the nonresident commercial licensee enters North Carolina to engage in commercial real estate brokerage acts, he must enter into a brokerage cooperation agreement ("agreement") with a resident North Carolina real estate broker.

B. The agreement must be signed by the nonresident commercial licensee and the North Carolina broker.

C. A copy of the agreement must be maintained by the nonresident commercial licensee and the North Carolina broker in their files for at least three years from the termination of the transaction.

D. The brokerage cooperation agreement must set forth all material terms of the agreement including, at a minimum, a statement that:

1. The nonresident commercial licensee
 - a. agrees to be bound by and subject to the provisions of the North Carolina Real Estate License Law and Commission Rules when performing real estate brokerage acts in North Carolina;
 - b. will pay to the North Carolina broker any trust monies received by the nonresident commercial licensee in connection with any transaction conducted under the agreement for the North Carolina broker to deposit in his firm's trust account;
 - c. will maintain and retain all documents and records relating to transactions conducted under the agreement; and

d. will identify himself as a Limited Nonresident Commercial Real Estate Broker (or Salesperson) in all advertising in connection with transactions conducted under the agreement and any other advertising where he holds himself out to be licensed in North Carolina.

2. The North Carolina broker

a. agrees to actively and personally supervise the nonresident commercial licensee in a manner which reasonably assures that the nonresident commercial licensee performs all acts for which a nonresident commercial license is required in accordance with the North Carolina Real Estate License Law and Commission Rules;

b. assumes responsibility for verifying that the nonresident commercial licensee has a current North Carolina Limited Nonresident Commercial Real Estate Broker or Salesperson License;

c. will promptly notify the Commission if the nonresident commercial licensee violates the North Carolina Real Estate License Law or Commission Rules;

d. will maintain and retain all documents and records relating to transactions conducted under the agreement;

e. will assure that all advertising in connection with transactions conducted under the agreement includes the name of the North Carolina broker and identifies the nonresident commercial licensee as a Limited Nonresident Commercial Real Estate Broker (or Salesperson) if the advertising also contains the name of the nonresident commercial licensee; and

f. will remit to the real estate firm with which the nonresident commercial licensee is associated at the time of the agreement any brokerage fee or other compensation earned by the nonresident commercial licensee under the agreement which is received by the North Carolina broker.

Mr. Fisher stated that he would prepare a draft report of the meeting to circulate to the committee members for their comments. Upon approval by the committee, the report and recommendation will be submitted to the Real Estate Commission for its consideration, hopefully not later than its September 11 meeting.

The committee members commended the Commission and its staff for its prompt and thoughtful treatment of this issue, and Mr. Fisher thanked the committee members and Mr. Dunklin for their valuable advice and input.

There being no further business, the meeting was adjourned.

Submitted by:

Phillip T. Fisher

Phillip T. Fisher, Facilitator

This 30th day of August, 2002.